



7710-12

POSTAL SERVICE

Exercise of Powers Reserved to the Governors and the Board of Governors

AGENCY: Postal Service.

ACTION: Notice of resolutions regarding the absence of a quorum.

SUMMARY: The Board of Governors of the Postal Service has adopted a resolution regarding the exercise of those powers reserved to the Board upon the loss of a quorum of the Board. During the time in which the Board is unable to form a quorum, those powers needed to provide for continuity of operations would be delegated to a Temporary Emergency Committee composed of the remaining members of the Board. The Governors of the Postal Service have also issued a resolution regarding the exercise of the powers vested solely in the Governors, as distinguished from the Board of Governors. The resolution clarifies that the inability of the Board to constitute a quorum does not inhibit or affect the authority of the Governors then in office to exercise those powers vested solely in the Governors, upon the concurrence of an absolute majority of the Governors then in office.

DATES: *Effective date:* November 14, 2014.

FOR FURTHER INFORMATION CONTACT: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260-1000. Telephone: (202) 268-4800.

SUPPLEMENTARY INFORMATION:**Overview**

The Board of Governors of the Postal Service has promulgated a resolution regarding the exercise of those powers reserved to the Board upon the loss of a quorum of the Board. The resolution delegates to a Temporary Emergency Committee, consisting of the remaining members of the Board, those powers reserved to the Board that are needed to provide for continuity of operations during the period of time in which the Board is unable to form a quorum. In addition, the Governors of the Postal Service have issued a separate resolution regarding the exercise of the powers vested solely in the Governors, as distinguished from the Board of Governors. The resolution clarifies that the inability of the Board to constitute a quorum does not inhibit or affect the authority of the Governors then in office to exercise those powers vested solely in the Governors. The resolution states that except as otherwise provided by statute, the Governors shall exercise those powers vested in the Governors upon the concurrence of an absolute majority of Governors then in office.

Background

While the powers of the Postal Service are generally directed by the Board of Governors, 39 U.S.C. 202(a)(1), the statute broadly authorizes the powers conferred on the Board to be delegated to a committee of the Board, or to the Postmaster General, 39 U.S.C. 402. Thus, the determination whether authority conferred on the Board by statute should be delegated, or should be exercised through the mechanism of the full Board, is ultimately made by the Governors. In addition, certain other actions are

reserved by statute solely to the Governors, including the appointment and removal of the Postmaster General and the establishment of prices and classifications for postal products, 39 U.S.C. 202(c), 404(b), 3632. These authorities demonstrate that the Governors, who are principal officers under the Constitution, have “ultimate control and authority” over the Postal Service. *Silver v. United States Postal Serv.*, 951 F.2d 1033 (9th Cir. 1991).

The statute requires the Board to have a quorum of 6 members in order to exercise those powers which have been reserved to the Board rather than delegated, 39 U.S.C. 206(c). In anticipation of the situation in which the Board is unable to constitute a quorum due to the fact that an insufficient number of Governors are in office, the Board issued a resolution regarding the continued exercise of those powers that are reserved to the Board by its by-laws during a period in which it is disabled from assembling a quorum. This resolution was approved in a meeting in which a quorum of the Board was present.

Furthermore, the Governors determined that it was appropriate to issue a resolution articulating their position concerning the exercise of those powers vested solely in the Governors, as distinguished from the Board. The Governors anticipated that questions may be raised as to whether the inability of the Board to assemble a quorum affects the Governors’ ability to exercise those powers.

Powers Reserved to the Board of Governors

After considering the legal issues involved, including the specific statutory structure under which the Postal Service operates, the Board has promulgated a resolution that delegates to a Temporary Emergency Committee certain powers

reserved to the Board by its by-laws during any period of time in which vacancies on the Board prevent it from assembling a quorum. This delegation would also apply in emergency circumstances in which death, incapacity, or disruption of transportation or communications reasonably prevent a Board quorum from being assembled.

The Temporary Emergency Committee consists of the remaining members of the Board who are able to assemble, and exercises those powers reserved to the Board by its by-laws that are necessary to provide for continuity of operations. The Temporary Emergency Committee will exercise those reserved Board powers necessary for operational continuity until such time as sufficient members are available to enable a quorum of the Board to convene.

Powers Reserved to the Governors

After considering the legal issues involved, the Governors have issued a resolution that makes two determinations. First, the resolution states that the inability of the Board to constitute a quorum does not prevent the Governors then in office from exercising those powers vested solely in the Governors, as distinguished from the Board. Second, the resolution states that, except as otherwise provided by statute, the Governors will exercise those powers upon the concurrence of an absolute majority of Governors then in office.

The Governors issued this resolution after considering the plain language of the statute. The Governors determined that, with one express exception (concerning the removal of the Inspector General), there is no requirement that a specific number of Governors be in office in order to exercise those powers vested solely in them. Rather, the statute generally specifies that there must be the concurrence of an absolute

majority of the Governors then “in office” or “holding office” in order for the Governors to exercise those powers. See 39 U.S.C. 205(c)(1) (appointment and removal of Postmaster General); 3632(a) (establishment of rates and classifications for competitive products).

The Governors also determined that it would raise serious constitutional concerns to interpret the statute as preventing the exercise of their powers if the Board cannot form a quorum. The powers to appoint and remove the Postmaster General, revoke delegated Board authority, and make pricing and classification decisions ensure that, as principal officers under the Constitution, the Governors have “ultimate control and authority” over the Postal Service, and therefore that the Postal Service’s governance structure is constitutionally sound. *Silver*, 951 F.2d at 1036-1041. Interpreting the statute as imposing implicit limits on the ability of the Governors to exercise those powers would be inconsistent with the court’s holding. Furthermore, such an interpretation would violate separation of powers principles. In particular, it would violate Article II of the Constitution for the Governors, who are directly accountable to the President, to be completely prevented from removing the Postmaster General, an inferior officer under the Constitution who exercises significant executive authority.

The statute does not specify a particular requirement regarding the exercise of the Governors’ authority in certain circumstances, including in the establishment of prices and classifications for market-dominant products and the revocation of a delegation of Board authority. In such circumstances, the Governors determined that it was reasonable and appropriate to apply the same rule as generally specified by the

statute for the exercise of its powers: action can be taken with the consent of an absolute majority of the Governors then in office.

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